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Supreme Court of the United States

October Term, 1933

No. [redacted] 9

THOMAS C. ROWLEY, Treasurer of Converse County, State of Wyoming; CHARLES M. HALL, Treasurer of Fremont County, State of Wyoming; ALTA PEARL MASSEE, Treasurer of Natrona County, State of Wyoming; and D. A. SHOOPMAN, Treasurer of Niobrara County, State of Wyoming,

Petitioners,

vs.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, a Corporation,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit, and Brief in Support Thereof

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No......

THOMAS C. ROWLEY, Treasurer of Converse County, State of Wyoming; CHARLES M. HALL, Treasurer of Fremont County, State of Wyoming; ALTA PEARL MASSEE, Treasurer of Natrona County, State of Wyoming; and D. A. SHOOPMAN, Treasurer of Niobrara County, State of Wyoming,

Petitioners,

vs.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, a Corporation,

Respondent.

Petition for Writ of Certiorari

To the Honorable The Supreme Court of the United States:

The petition of Thomas C. Rowley, Treasurer of Converse County, State of Wyoming; Charles M. Hall, Treasurer of Fremont County, State of Wyoming; Alta Pearl Massee, Treasurer of Natrona County, State of Wyoming; and D. A. Shoopman, Treasurer of Niobrara County, State of Wyoming, respectfully shows to this Honorable Court:

A

ISSUES IN THE CASE

1. On the 7th day of November, A. D. 1931, the respondent, Chicago and Northwestern Railway Company, an Illinois corporation, filed in the United States District Court for the District of Wyoming, its Bill in Equity against your petitioners, residents of the State of Wyoming, seeking to enjoin your petitioners from collecting the full amount of

tax levied against its operative railroad property in the State of Wyoming for the year 1931. (Bill, §§ 1, 2, 3, 4, 5; R. 1, 2)

(a) The alleged grounds for equitable relief are that respondent's operative railroad property in Wyoming has been subject to fraudulent discrimination, being intentionally, greatly over-valued while all other property in Wyoming has been intentionally, grossly under-valued for taxation (Bill, § 14; R. 5) in violation of respondent's constitutional rights under the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of Wyoming. (Bill, §§ 7, 8; R. 2, 3)

(b) It is alleged that the tax levied upon said over-valuation is, because of such intentional discrimination, illegal. (Bill, §§ 7, 8; R. 2, 3)

(c) It is alleged intentional discrimination resulted from certain classes of taxable property being intentionally, entirely omitted from the assessment rolls. (Bill, § 14; R. 5)

(d) It is alleged intentional over-valuation of respondent's property, intentional under-valuation of all other property, and the intentional omission entirely from the assessment rolls of certain classes of taxable property, have been pursued over a period of years with the intent and purpose of compelling respondent to pay taxes greatly in excess of the amount legally due from it. (Bill, § 14; R. 6)

(e) The prayer was for permanent injunction, and such other relief as to the Court may seem just and equitable. (R. 8)

2. Petitioners answered, denying the existence of any of the grounds complained of, averred the legality of the tax and that respondent had an adequate, full and complete remedy at law. (Answer, § 16; R. 23)

3. Respondent failed to prove, (1) the existence of intentional over-valuation of its property; (2) intentional under-valuation of any taxable property; (3) intentional, entire omission of any class or classes of taxable property from the assessment rolls; or (4) the existence of fraud in the taxation of respondent's property. Both lower courts so found. (District Judge's Memorandum, R. 42, 43; Finding of Fact No. 9, R. 46; Circuit Court's Opinion, R. 151-156)

4. The permanent injunction was not granted upon any ground alleged in the Bill in Equity, but because the Trial Court concluded that the Wyoming State Board of Equalization had made an error in its labors to reduce the value of respondent's Wyoming property to grant some relief to respondent. (R. 43)

B

OPINIONS AND DECREES OF THE LOWER COURTS

A temporary restraining order was granted ex parte, which remained in effect until the final hearing. (R. 11)

On the trial on the merits, findings of fact, (R. 45-47) conclusions of law (R. 47, 48) and decree of the United States District Court for the District of Wyoming (R. 48, 49) were in favor of the respondent. A permanent injunction was granted as prayed for, and respondent was awarded its costs.

In due time, petitioners appealed the case to the United States Circuit Court of Appeals for the Tenth Circuit, which Court, in its decree dated January 9th, A. D. 1934, (R. 163) affirmed the decree of the United States District Court for the District of Wyoming. The opinion of the Circuit Court of Appeals by Circuit Judges Sam G. Bratton and Orie L. Phillips and District Judge J. Foster Symes, Judge Bratton writing, Judge Symes dissenting on the question of jurisdiction, is reported in ..... Fed. (2nd) Page ....., Advance Sheet No. ....., ..., 1934. (R. 151-162)

In due time, petitioners filed in the Circuit Court of Appeals for the Tenth Circuit, their petition and supporting brief for a rehearing, which was, on February 23rd, 1934, denied. (R. 165)

C

STATEMENT OF FACTS

Your petitioners respectfully show that the facts involved and on which the Circuit Court of Appeals for the Tenth Circuit rendered its decree affirming the decree of the United States District Court for the District of Wyoming, are as follows:

Respondent operates a railroad running through nine states, including Wyoming, and the portion of its main line track in Wyoming runs into and/or through four counties.

Conditions throughout the system are not substantially uniform.

The Wyoming State Board of Equalization valued respondent's operative railroad property in Wyoming for taxation for the year 1931 at $7,989,587.00 (R. 106) and so notified respondent. A hearing upon respondent's objections to this valuation was held, which resulted in the valuation being reduced in the amount of $108,583.00.

This reduced valuation was obtained by taking the mean of four factors, viz., traffic units, 1.58; use of rolling stock, 1.65; composite of gross and net operating revenue, 1.89 corrected to 1.79; and percentage of main line track in Wyoming to the entire main line track mileage of the system, 3.29, being 2.1, (R. 114) and allocating this percentage, $7,881,004.00, of the system value, $375,285,902.00, (which was not in dispute) to Wyoming for taxation. Each of the factors so used represents the Wyoming portion as related to the entire system.

On August 30th, 1932, the Trial Court reached the conclusion, and rendered a memorandum judgment, which appears at Page 28 of the Record, holding that the Federal Court was without jurisdiction to entertain this action because the respondent had not established that it did not have an adequate remedy at law. Upon re-arguing the question of jurisdiction, the Trial Court reversed its position (R. 33) and held that the Federal Court did have jurisdiction, and enjoined the collection of the tax based upon the reduced value of $7,881,004.00 for Wyoming, so determined, upon the sole basis of the use of the factor 3.29, holding that the inclusion of this factor with the other three factors in determining the reduced value was erroneous because of the non-uniformity of the conditions of respondent's property within and without the State of Wyoming, stating that the State Board of Equalization, with knowledge of such non-uniformity of conditions, had made no allowance therefor, and for this reason, the use of this factor amounted to a transcending of respondent's constitutional rights. (Judge's Memorandum, R. 33, 42, 43) The decree of the Circuit Court of Appeals for the Tenth Circuit affirmed the decree of the United States District Court upon the same ground. (See Opinion of Circuit Court of Appeals, R. 151-156)

D

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

Your petitioners are advised, and so believe, that under the facts and the law of this case, the decree of the United States Circuit Court of Appeals for the Tenth Circuit, affirming the decree of the United States District Court for the District of Wyoming enjoining petitioners from collecting the taxes as levied upon the operative railroad property of respondent in Wyoming upon the valuation determined by the Wyoming State Board of Equalization, is erroneous and in violation of the rules, decisions and principles of law as pronounced by this Honorable Court, and that this Honorable Court should require said case to be certified to it for its review and determination under and in accordance with the provisions of the Acts of Congress in such case made and provided, for the following reasons:

1. Because the Federal Court was without equitable jurisdiction of the action, the Statutes of the State of Wyoming affording full, complete and adequate legal remedies.

2. Because the Federal Court was without equitable jurisdiction to determine the value of respondent's taxable, operative, railroad property in Wyoming and direct an apportionment of such value to tax collecting officers, and the action of the Trial Court in so doing constituted an unlawful interference with the lawful exercise of legislative authority of the State of Wyoming.

3. Because the tax was levied uniformly upon all property in Wyoming of the same Class (all railroad properties) without discrimination, (R. 106) and was not levied in violation of any of the provisions of the Constitution of the United States, or of the Constitution of the State of Wyoming (Bill, § 12; R. 4); and aside from claimed over-valuation, the legality of the tax is not questioned. (Bill, § 8; R. 3, 4)

4. Because the Wyoming State Board of Equalization, in fixing the value of respondent's taxable, operative, railroad property for taxation, exercised its honest judgment, free from fraud or intentional discrimination and made allowance for the difference in the character and value of respondent's taxable property in Wyoming as compared to the value of

the property of respondent's railroad system in the other states.

5. Because the decree of the United States Circuit Court of Appeals for the Tenth Circuit, affirming the decree of the United States District Court for the District of Wyoming, is contrary to law as pronounced in the decisions of this Honorable Court.

E

BRIEF ACCOMPANYING PETITION

Your petitioners append hereto their brief in support of this petition, in which each and all of the foregoing matters are more fully set forth and discussed.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 881, Thomas C. Rowley, Treasurer of Converse County, State of Wyoming; Charles M. Hall, Treasurer of Fremont County, State of Wyoming; Alta Pearl Massee, Treasurer of Natrona County, State of Wyoming; and D. A. Shoopman, Treasurer of Niobrara County, State of Wyoming, Appellants, vs.Chicago and Northwestern Railway Company, a Corporation, Appellee, that the decree of the United States Circuit Court of Appeals for the Tenth Circuit, affirming the decree of the United States District Court for the District of Wyoming, may be reviewed by this Honorable Court; and that your petitioners may have such relief in the premises as to this Honorable Court may seem meet and just.

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Petitioners,

vs.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, a Corporation,

Respondent.

Brief in Support of Petition for Writ of Certiorari

I

THE OPINIONS OF THE COURTS BELOW

The opinion of the United States District Court for the District of Wyoming is reported in 1st Fed. Supp., Page 729, Chicago and Northwestern Railway Co. vs. Thomas C. Rowley, Treasurer, et al., and is at Pages 33-49 of the Record.

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit is reported in 68 Fed. (2nd) Page 517, Advance Sheet No. ....., March 17, 1934, Thomas C. Rowley, Treasurer, et al. vs. Chicago and Northwestern Railway Co., and is at Pages 151-162 of the Record.

II

JURISDICTION

1. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229 (43 Stat. 938 (28 USCA § 347)).

2. The decree of the Circuit Court of Appeals was entered January 9th, 1934. Petition for rehearing was denied February 23rd, 1934. (R. 165)

3. The parties are citizens of different states and the matter in controversy exceeds in value the jurisdictional amount as to each petitioner. (R. 47) The action is in equity, in which respondent seeks to permanently enjoin the county treasurers of Converse, Fremont, Natrona and Niobrara Counties, in the State of Wyoming, from collecting taxes levied on its operative railroad property within said counties in the State of Wyoming.

4. The grounds on which respondent relies for injunctive relief against the collection of the taxes are stated in Subdivision A of the petition.

5. The decree of the United States Circuit Court of Appeals for the Tenth Circuit affirms the decree of the United States District Court for the District of Wyoming, enjoining petitioners from collecting the taxes based upon the valuation determined by the Wyoming State Board of Equalization.

6. The following decisions of this court are believed to sustain jurisdiction of this appeal:

Bradford Electric Light Co. v. Clapper, 284 U. S. 221.
Public Service Commission, et al. v. Batesville Telephone Co., 284 U. S. 6.
Smith v. Wilson, 273 U. S. 388, 391.
Magnum Import Co., Inc. v. Coty, 262 U. S. 159.

III

STATEMENT OF THE CASE

Statements of the case and of the matters involved are set forth under Subdivisions A and C of the petition.

IV

SPECIFICATIONS OF ERROR

In its decree affirming the decree of the Federal District Court, the United States Circuit Court of Appeals for the Tenth Circuit committed prejudicial error, materially affecting the substantial rights of the petitioners:

1. In holding that the Federal Court had equitable jurisdiction of said action, the Statutes of the State of Wyoming affording complete and adequate legal remedies.

2. In affirming the action of the Federal Court in determining the value of respondent's taxable, operative, railroad property in Wyoming and directing the apportionment of that value to the tax collecting officers.

3. In that the Bill of complaint fails to state facts sufficient to constitute a cause of action for equitable relief in the Federal Court as against said petitioners, or either of them.

4. In holding that the State Board of Equalization of the State of Wyoming, in valuing respondent's railroad property for taxation, did not take into consideration and make allowance for the difference in the character and value of respondent's property in Wyoming as compared to the value of the property of respondent's railroad system in the other states.

5. In that the decree of the United States Circuit Court of Appeals for the Tenth Circuit is not supported by the evidence and is contrary to law as pronounced in the decisions of this Honorable Court.

V

ARGUMENT

1.

The Federal Court was without equitable jurisdiction of the action, the Statutes of the State of Wyoming affording full, complete and adequate legal remedies.

Every ground in the Bill urged by respondent in support of its claim for equitable relief, except the question of excessive value for the single year 1931, failed of proof. The alleged over-valuation is the basis upon which injunctive relief

was granted. The conclusion that four separate suits in the state courts will of necessity follow a denial of injunctive relief is without support in the Record and there are no allegations to that effect in the Bill. Courts of equity will consider whether complete justice to all parties, petitioners as well as respondent, will follow if jurisdiction is taken upon the ground of avoiding a multiplicity of suits.

The situation provoked by the Federal District Court taking equitable jurisdiction in the case at bar is that functions of government, state, county, city and school district, maintained by revenue derived from taxation, are interfered with.

The respondent does not challenge the tax in question until the very last hour; does not object to the valuation as reduced by the Wyoming State Board of Equalization in response to its objection, from $7,989,587.00 to $7,881,004.00; does not attempt to prevent certification by the Wyoming State Board of Equalization to the collecting officers; does not attempt to prevent the levy based upon the valuation certified; does not plead or evidence inability to pay the tax levied; does not allege or claim inability of petitioners, or any of them, to make full restoration.

Hale v. Allinson, 188 U. S. 56, Opinion at Pages 77, 78.

Before respondent could invoke the aid of a Federal court of equity, it was necessary for it to exhaust the legal remedies provided by the laws of the State of Wyoming.

Farncomb, et al. v. City and County of Denver, 252 U. S. 7, 11, 12.
Judicial Code, Sec. 267, (28 USCA § 384).

Respondent did not pursue its legal remedies to final conclusions. Section 115-512, Wyoming Revised Statutes, 1931, as follows:

> "Any person, persons, firm or corporation, who may feel aggrieved by the assessment or assessments by the board may take an appeal from the decision of the board to the district court of the county wherein the property or some part thereof is situated, where a trial de novo to the court shall be had.
>
> "The party or parties appealing shall, within sixty days after the decision of the board, file in the district court to which the appeal is taken a petition setting out the cause of complaint, and a copy of the records of the

board, all duly certified by the secretary of said board, and copies of said assessment or assessments.

"The party appealing shall at the time of filing such appeal enter into an undertaking to be approved by the clerk or judge of said district court, and to be given to the state of Wyoming in such an amount as the court or judge may fix, but in no case less than five hundred dollars ($500.00), and conditioned that the appellant shall prosecute the appeal without unnecessary delay, and for the payment of all costs, taxes, interest and penalties that may be ultimately levied on the property, the assessment of which is in controversy.

"The clerk of the court shall immediately upon filing of the appeal notify the secretary of the board under the seal of the court, and supply him with a copy of the petition.

"It shall be the duty of the attorney general and the county attorney of the county to which the appeal is taken to represent the board in proceedings on the appeal.

"All proceedings on appeal except as herein otherwise provided shall be under the provisions of the code of civil procedure, as in other civil cases."

provides a full, complete, adequate and simple procedure by which the question of valuation could have been determined de novo by the District Court in the county wherein respondent's property, or some part thereof, is situated. In such a proceeding, respondent could have escaped the result of the alleged unlawful acts of the Wyoming State Board of Equalization and could have been presented for consideration anew in the District Court of any one of the four counties where any part of such property is situated, the question of valuation. This, it failed to do.

No levy could have been certified to the county assessors by the Wyoming State Board of Equalization until the value of the property was determined by the District Court. Respondent made no effort to pursue its legal remedies. It could have, in one proceeding against the Wyoming State Board of Equalization, tested the validity of the valuation complained of.

Bunten v. Rock Springs Grazing Ass'n, 29 Wyo. 461, 480; 215 Pac. 244.

Section 115-512, Wyoming Revised Statutes, 1931, supra, contains provision for a case of this character, providing full and complete jurisdiction to dispose of it in a single action, and the remedy thus furnished is plain, simple, adequate and complete.

Section 89-4202, Wyoming Revised Statutes, 1931, provides:

> "Actions to enjoin the illegal levy of taxes and assessments must be brought against the corporation or person for whose use and benefit the levy is made; and if the levy would go upon the tax list, the county treasurer must be joined in the action."

Section 89-4203, Wyoming Revised Statutes, 1931, provides:

> "Actions to enjoin the collection of taxes and assessments must be brought against the officer whose duty it is to collect the same; actions to recover back taxes and assessments must be brought against the officer who made the collection, or, if he is dead, against his personal representative; and when they were not collected on the tax list, the corporation which made the levy must be joined in the action; provided, that when the money derived from said taxes or assessments has been actually paid over to any county or municipal corporation for whose use and benefit it was levied or collected, then an action shall be brought against said county or municipal corporation to recover said taxes or assessments."

Section 115-311, Wyoming Revised Statutes, 1931, provides:

> "In all cases where any person shall pay any tax, or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to clerical errors or other errors, the board of county commissioners shall direct the treasurer to refund the same to the taxpayer, or, in case any real property subject to taxation, shall be sold for the payment of such erroneous tax, the error in tax may at any time be corrected as above provided, and shall not affect the validity of the sale, but such property shall be redeemed by the county as hereinafter set forth."

Section 89-4201, Wyoming Revised Statutes, 1931, provides:

> "District courts shall have jurisdiction to enjoin the illegal levy of taxes and assessments, or the collection of either, and of actions to recover back such taxes or assessments as have been collected, without regard to the amount thereof; but no recovery shall be had unless the action be brought within one year after the taxes or assessments are collected."

The above statutes provide an adequate legal remedy.

Henrietta Mills v. Rutherford County, 281 U. S. 121.
Farncomb v. City and County of Denver, supra.
Keokuk & Hamilton Bridge Co. v. Salm, et al., 258 U. S. 122.
Pittsburg, C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421, 432, 434, 436.
Taylor v. Secor, 92 U. S. 575, 614, 615.

These citations state the general and well recognized principle of law, defining the limitations of the equitable jurisdiction of Federal courts when the matter in controversy is the proposed interference by a court of equity with the collection of state revenue. The showing must be such as to leave but one conclusion, viz., that there is no other adequate and complete method of relief for the complaining party.

A suit is not necessary to obtain a refund of illegally collected taxes. Section 115-311, Wyoming Revised Statutes, 1931, supra, has been construed by the Wyoming Supreme Court in the case of Carton v. Board of County Commissioners, Vol. 10 Wyoming Reports 416, Page 438, 69 Pacific 1013, as mandatory upon the county commissioners of a county to direct the county treasurer to refund the amount of such tax to the taxpayer where the tax paid is found to be erroneous or illegal; and the same court has not denied authority in the board of county commissioners to allow a refund upon the presentation by a taxpayer of an application for a refund of an illegal tax without the bringing of a suit.

Board of Com'rs v. Searight Cattle Co., 3 Wyo. 777, 796; 31 Pac. 268, 275, 276.

There is neither allegation or proof of the existence of any special circumstances which would render the legal remedy inadequate.

Stratton v. St. Louis Southwestern Ry. Co., 284 U. S. 530.

The case at bar comes clearly within the rule stated in the case of Mathews, et al. v. Rodgers, et al., 284 U. S. 521. As in the Mathews case, respondent seeks, in a Federal court, to interfere by injunction with operations of the administrative functions of state government, and as there stated, the mere illegality or unconstitutionality of a state or municipal tax is not in itself ground for equitable relief in the courts of the United States.

Singer Sewing Machine Co. v. Benedict, 229 U. S. 481.
Boise Artesian Hot & Cold Water Co. v. Boise City, 213 U. S. 276; 29 Sup. Ct. Rep. 426.

Something more than what the record in the case at bar discloses must be present to justify the granting of equitable relief in a Federal court.

Mathews, et al. v. Rodgers, et al., supra.

There is no fraud proved; no property is taxed that is not legally liable to taxation. There is no proof of the violation of the rule of uniformity prescribed by Article XV, Section 11, of the Constitution of the State of Wyoming. (See Page 18) There is no proof of irreparable damage to respondent that will inevitably result from a consummation of the acts allegedly threatened by the defendants.

Allen v. Pullman's Palace Car Co., 139 U. S. 658, 662.

In Paragraph 12 of the Bill (R. 4), respondent alleges that the value of its property was unlawfully and fraudulently fixed in excess of its actual value. In the Judge's Memorandum, (R. 33, 43) the Trial Court says, "reasonable and honest effort was made to fairly and honestly tax property and to secure the return of all property for taxation which is legally taxable."

The Court's conclusion that respondent's property in the State of Wyoming was over-valued must, to be consistent

with the above statement, reflect an honest mistake by the State Board of Equalization and will not give a Federal court jurisdiction in equity. An intentional, discriminative over-valuation, transcending respondent's constitutional rights, must be established to make it the basis of equitable relief in the Federal Court. The Record fails to contain any evidence to that effect, and the Trial Court, in its Memorandum, (R. 33, 42) says, "nor is there any showing which justifies the conclusion that there was a studied attempt on the part of the taxing officials to bring about a favorable result to one class of taxpayers over another."

There was no finding of fact in the record supporting the contention of respondent that fraud was committed by the State Board of Equalization in valuing respondent's property in Wyoming for taxation purposes. In the face of the record, the most that can be contended for by respondent is that the State Board of Equalization made an honest mistake or committed an error of judgment in valuing respondent's property. The Trial Court so concluded, (R. 43) and the Circuit Court of Appeals so affirmed. (R. 151)

The Federal District Court did not have jurisdiction to review the valuation fixed by the Wyoming State Board of Equalization.

Taylor v. Secor, supra.
Kentucky Railroad Tax Cases, 115 U. S. 321, 334, 335.
Southern Railway Co. v. Watts, 260 U. S. 519, 526, 527.
Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350, 352, 353.

Following the law as stated in the case of Chicago Great Western Ry. Co. v. Kendall, 266 U. S. 94, 98, 99, the Record in the case at bar makes it clear, beyond conjecture, that the Federal Court was without jurisdiction.

Stratton v. St. Louis Southwestern Ry. Co., supra.

In the case at bar, all that need be determined is that the tax, or same portion thereof, is illegal and it then becomes the duty of the county commissioners to direct the county treasurer to make a refund.

Carton v. Com'rs, supra.

The refund of an illegal or erroneous tax is not dependent upon a judicial determination. Section 115-311, Wyoming Revised Statutes, 1931, supra, would be a useless enactment if one, having paid an illegal or erroneous tax, had to first litigate the question to obtain a refund.

The procedure pursued by respondent is what this statute is designed to eliminate, viz., the expense and inconvenience of litigation. The above statute provides for immediate refund of an illegal or erroneous tax upon payment of same and application for return thereof, and it has been, by the Supreme Court of the State of Wyoming, in Carton v. Com'rs, supra, held to be mandatory upon the board of county commissioners to direct the refund of any money paid in satisfaction of an illegal or erroneous tax. Neither the taxpayer nor the courts are free to assume that public officers will refuse to obey the mandate of this statute and compel the taxpayer to determine by litigation the question of error or illegality before a refund will be directed and paid.

Sunday Lake Iron Co. v. Township of Wakefield, supra.

2.

The Federal Court was without equitable jurisdiction to determine the value of respondent's taxable, operative, railroad property in Wyoming and direct an apportionment of such value to tax collecting officers, and the action of the Trial Court in so doing constituted an unlawful interference with the lawful exercise of legislative authority of the State of Wyoming.

Article XV, Section 10, of the Constitution of the State of Wyoming, provides:

"The duties of the state board shall be as follows: To fix a valuation each year for the assessment of live stock and to notify the several county boards of equalization of the rate fixed at least ten (10) days before the day fixed for beginning assessments; to assess at their actual value the franchises, roadway, roadbed, rails and rolling stock and all other property, used in the operation of all railroads and other common carriers, except machine shops, rolling mills and hotels in this state; such assessed valuation shall be apportioned to the counties in which said roads and common carriers are located, as a

basis for taxation of such property; provided, that the assessment so made shall not apply to incorporated towns and cities. Said board shall also have power to equalize the valuation on all property in the several counties for the state revenue and such other duties as may be prescribed by law."

Article XV, Section 11, of the Constitution of the State of Wyoming, provides:

"All property, except as in this constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

Section 115-519, Wyoming Revised Statutes, 1931, Appendix, Page 33.

Kelley v. Rhoads, 7 Wyo. 237; 51 Pac. 593.

Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599.

Under these constitutional and statutory provisions, the duty of valuing railroad property for taxation and directing the levy of a tax thereon is placed with the State Board of Equalization. No judicial agency can exercise that function. The action of the Federal Court in determining the valuation and directing the apportionment of the amount of the tax to be certified to the tax collecting authorities is an attempt of the Federal Judiciary to exercise legislative powers of state government.

In the case at bar, the Federal District Court has exceeded its jurisdiction and invaded the legislative functions of the state government in assuming to determine the value of respondent's property for taxation and directing the apportionment thereof to the collecting officers.

Kirwan v. Murphy, 189 U. S. 35, 54, 55.
Heine v. Levee Com'rs, 86 U. S. 655, 661.
Taylor v. Secor, supra.
Yost v. Dallas County, 236 U. S. 50, 56, 57.
State Railroad Tax Cases, 92 U. S. 575, 614, 615.

3.

The tax was levied uniformly upon all property in Wyoming of the same class (all railroad properties) without discrimination and was not levied in violation of any of the provisions of the Constitution of the United States, or of the Constitution of the State of Wyoming; and aside from claimed over-valuation, the legality of the tax is not questioned.

In the case at bar, the Trial Court found that no intentional discrimination existed or had been practiced, stating that there was no intentional and systematic under-valuation of property generally throughout the State of Wyoming; that there was no intentional omission from the tax rolls of a considerable amount of property (R. 42, 43; also, Court's Ninth Finding of Fact, R. 46); and in the Judge's Memorandum, (R. 33, 42) the Court says, after concluding that respondent's property in Wyoming was over-valued:

> "The remaining point in the case revolves around plaintiff's contention, that plaintiff's property has been consistently, continuously and intentionally valued upon a different and a higher basis than other property in the state, together with the claim that much taxable property in the state has been continuously and intentionally omitted from taxation lists. Evidence has been presented on behalf of the plaintiff tending to support its contention in this respect. When the proofs are *analized,* however, it must be admitted that so far as the agricultural and grazing land valuations are concerned, they generally represent the true and full value of such properties. In other classes of property, there are isolated instances in some of the counties through which plaintiff's line passes, where there may have been valuations for assessment at less than the true value. These proofs, however, in my opinion, do not reach the dignity of a continuous, studied and intentional under-valuation, nor is there any showing which justifies the conclusion that there was a studied attempt on the part of the taxing officials to bring about a favorable result to one class of taxpayers over another. * * * The evidence presented does not therefore justify the granting of relief to the plaintiff upon this ground, in the face of a fair showing that reasonable and honest effort was made to fairly

and honestly tax property and to secure the return of all property for taxation which is legally taxable.

"Recapitulating, the conclusions of the court are, that the plaintiff is entitled to relief upon the basis of the erroneous inclusion of the track mileage percentage as a factor in determining the valuation of plaintiff's property in Wyoming; * * *."

4.

The Wyoming State Board of Equalization, in fixing the value of respondent's taxable, operative, railroad property for taxation, exercised its honest judgment, free from fraud or intentional discrimination and made allowance for the difference in the character and value of respondent's taxable property in Wyoming, as compared to the value of the property of respondent's railroad system in the other states.

In order to determine whether or not the respondent's property was valued by the Wyoming State Board of Equalization by an arbitrary and unreasonable method, it is necessary to examine the evidence.

The Board took into consideration the value placed upon respondent's property in Wyoming by the officers of the respondent in making its 1930 tax return (which is the basis used for determining the 1931 tax).

Section 115-519, Wyoming Revised Statutes, 1931, Appendix, Page 33.

That value, as sworn to by the officers of the respondent in its tax return, was $8,281,950.00. (R. 101)

The Board proceeded to determine the accuracy of this valuation as furnished by the respondent, testing this valuation by taking the figures representing the value of the property of the plaintiff's reproduction cost new, less depreciation established by the Interstate Commerce Commission, as the value of the same in 1917, adding the betterments since that date and applying a ratio of depreciation of 2½% per year.

In submitting its 1930 tax return, the respondent attached thereto an additional statement, which, it says, is a part thereof, and therein advised that it claimed the valuation

stated in the return does not represent the fair cash value of the property of the respondent.

Defendant's Exhibit No. 1, R. 102.

The Board next proceeded to determine the value of the respondent's property in Wyoming by using the factor 2.23, which represented the percentage of the entire net operating income of respondent's operative system in Wyoming. This percentage yielded a value of Wyoming property upon an earning basis, of $8,368,463.00.

The Board next proceeded to equalize the sum of these two figures, as determined by the procedure shown on Page 106 of the Record, and adding these two figures, dividing by two, the Board determined that the result, namely, $7,989,587.00, represented an equalized value with other property of like character, meaning other railroads, and thus found this value for respondent's Wyoming property for taxation. (R. 110)

For the purpose of determining whether it could justly make a further reduction of respondent's property value for 1931 taxation purposes comparable to other property of like character or kind, the Board took the five years of the net operating revenue, added them together, divided by five, and obtained the figure 2.114, which represented the actual earning capacity of the railroad over a five-year period. It next took the value of the physical property in Wyoming, as furnished by the respondent, and the net operating income for the year 1930, and adding these two figures, dividing by two, obtained the figure 2.14, as representing Wyoming's share of the value of the entire system based upon the respondent's figures furnished in its tax return.

The Board next considered the contentions of the respondent as to how the value of its property for taxation in Wyoming should be allocated, respondent contending that the following factors, and no others, would represent a just method of determining such value, namely, (1) the use of traffic units; (2) the use of rolling stock; (3) the operating revenue (gross). These factors yielding over a five-year average the figure 1.56, the Board could not reconcile this figure with what it thought was approximately the value at which respondent's property should be assessed.

Desiring, however, to give full consideration to the factors presented by respondent, the Board then took the first two factors presented by respondent, namely, traffic units and the

use of rolling stock, and added to those, two additional factors, namely, the mean average between net and gross operating revenue, giving the figure 1.79, and track mileage percentage, being the figure 3.29, and then determined the mean average of the four and arrived at the figure 2.1% of the value of the whole property of the system of respondent which is located in Wyoming and subject to taxation therein, this figure 2.1% giving a value to the property in Wyoming for taxation purposes for the year 1931 of $7,881,004.00.

The Board then proceeded to test the accuracy of this valuation by using respondent's figures given in its 1930 tax return as the value of its property in Wyoming as compared to the whole, and arrived at the figure 2.2%. Adding thereto the percentage of net operating income, 2.23%, the percentage of gross revenue, 1.46%, the average of use of rolling stock and the average of traffic units, 1.46, to which is added the factor 3.32, which is a ratio in keeping with the charges made by the respondent in the account submitted in their sworn statement of 1930, (R. 117) and dividing these five factors by the figure five, the Board obtained the result, 2.14.

In arriving at the value of respondent's operative property in Wyoming for taxation for the year 1931, the Board stated its objection to using the factors presented by respondent. (R. 108, 109) It further determined the percentage of all traffic turned over to the system by Wyoming and other roads to the system, being 37.38% of the whole traffic, finding the ratio for Wyoming to be 11.33%, making a difference of over 26%.

Exploring further to find the correct value of respondent's operative property in Wyoming for taxation for the year in question, the Board took the figure representing traffic units and the use of rolling stock, as presented by respondent, and adding thereto 26% of what it arrived at as the difference between traffic turned over to the system by Wyoming and by other roads to the system, and arrived at what the Board figured is a rectified condition of the application of traffic units and the use of rolling stock as the same might be applied to determining value in Wyoming for taxation purposes.

Next, the Board added to the result thus obtained, the net operating revenue in Wyoming and divided this sum by two, obtaining the figure 2.15, and felt convinced that the ratio upon which the value of respondent's operative property in

Wyoming for taxation purposes in 1931 was based, namely, the figure 2.1, was entirely fair to respondent; and this was a valuation less, in fact, than the value of other property of the same class and less than the valuation of the property as returned by respondent.

The Board stated why it would not accept the gross revenue as the respondent desired to use it in allocating value to Wyoming. (R. 109) The Board took everything into consideration, based upon the information furnished in the respondent's return of 1930 and such other information as was available, and considered the value of the main line track in Wyoming as compared to the value of the main line track of the system, and the value that the Board put on a mile of main line of respondent's road in Wyoming was $28,313.00, while the figure presented by the respondent as the average mile value for the entire system was $44,360.00. (R. 109)

The Board further considered the percentage of non-revenue freight hauled over the system as compared to the percentage of such freight hauled over the Wyoming portion of the system, and found that 8% more non-revenue freight was transported by Wyoming miles than on the miles of the system outside Wyoming. The Board also considered respondent's franchise in connection with the value of its property and treated it as part of the Wyoming property. (R. 110)

The Board considered that the figure $7,989,587.00 was the equalized value of respondent's property with other property in the state of like character,—that is, other railroads. (R. 110) If track mile percentage, 3.29, was used as the sole factor in determining the value of respondent's property in Wyoming for taxation for the year 1931, the result would be a value of $12,316,906.18 instead of the figure used, namely, $7,881,004.00, or 36% less than the value of such property as determined by the use of mileage unit basis. (R. 119)

The witness, McWhinnie, whose statement is not contradicted, says, "We considered the system value of all respondent's operative properties, including all its franchises." (R. 120)

The use of track mile percentage as a factor in determining value of railroad operative property of a railroad which is maintained and operated through different states, is a recognized, lawful method of determining value of such property in a single state for taxation purposes. Such factor may be

legally used as the sole measure of value in instances where there are no special circumstances existing to distinguish between the conditions in different states such as, for instance, terminal facilities of enormous value in one state and none in other states through which the road operates.

Cleveland C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 439, 445, 446.

Pittsburg C. C. & St. L. Ry. Co. v. Backus, supra.

The latter case above cited is authority for the legal use of track mile percentage for the purpose of allocating value for taxation in a single state when special circumstances are present relating to distinguishing elements of value in one state as against the value in another, this opinion being to the effect that it is not illegal to use the track mile percentage factor if value is not absolutely determined upon a mileage basis.

The State Board of Equalization took into consideration the exceptional values of respondent's property located in other states through which the system operates and made due allowance therefor in determining the value of Wyoming property. (R. 109)

Western Union Telegraph Co. v. Attorney General of Mass., 125 U. S. 530.

This case is authority for the use of mile percentage as a legal basis for apportionment of property value for taxation in a state where distinguishing circumstances are present and gives to the taxing state, value upon this basis, even though only 2,833.05 miles out of a total mileage of 146,052.60 miles of the system property are located in the taxing state, holding that because of the volume of business done by the company in the State of Massachusetts, considering the density of the population, and so forth, it was not an error to so value the property in Massachusetts.

5.

The decree of the United States Circuit Court of Appeals for the Tenth Circuit, affirming the decree of the United States District Court for the District of Wyoming, is contrary to law as pronounced in the decisions of this Honorable Court.

Under assignment of error No. 4, we set forth in some detail what evidence the Record discloses to show that the State Board of Equalization did recognize and give full consideration to the admitted difference in character, quality, quantity, cost and value of the respondent's operative, railroad property located within the State of Wyoming in comparison with like property of the system located outside the State of Wyoming.

The decree of the Federal District Court, and the decree of the Circuit Court of Appeals affirming it, both rest solely upon the finding that the State Board of Equalization did not, in using the factor 3.29, take into consideration the difference in the character, quality, quantity, cost and value of respondent's property within and without the State of Wyoming. (Finding No. 7, R. 46; Conclusion No. 3, R. 47; Opinion of the Circuit Court of Appeals, R. 151, 155)

In contending that the decree is contrary to law, petitioners do not ask a review of evidence seeking a favorable construction of conflicting testimony, but frankly assert that the Record does not contain a single statement supporting the above finding and conclusion.

In Finding of Fact No. 5 (R. 45), the Trial Court says, "the quantity, quality, cost and value of plaintiff's property located within the State of Wyoming, measured upon the basis of miles of main line track, is greatly less than throughout its system."

The witness, McWhinnie, testified for petitioners that the value placed upon a mile of main line track in Wyoming was $28,313.00, while the average system mile value was $44,360.00, or a difference of $16,047.00 per mile, less value placed upon the Wyoming mileage.

On a percentage basis, Wyoming mileage was valued at 63% of the average system mile. (R. 109) If the value of Wyoming mileage had been determined solely upon mileage percentage basis, the Wyoming value would have been $12,316,906.18 (R. 119), while the value given Wyoming mileage

was $7,881,004.00, or 63% of the value obtained by the exclusive use of the factor 3.29.

The Trial Court says, (Memorandum, R. 33, 43) "it is rather apparent that the mileage percentage basis under the circumstances in the case at bar would not be adapted to any method of determining value unless it were possible to equalize this factor before being used", but refuses to give any consideration to the testimony of the witness, McWhinnie, wherein he explains the purpose of using this factor to offset the discrimination against Wyoming value to the extent of 26% if the factors, traffic units 1.58, and use of rolling stock 1.64, are used in the manner proposed by respondent; (R. 108) and his statement as to the discrimination resulting against equitable Wyoming value by the use of these factors when and if used in the manner that respondent proposed and insisted they should be used, is not contradicted. The witness, Balch, for the respondent, acknowledged the existence of this difference as found by Witness McWhinnie. (R. 128)

The Circuit Court of Appeals emphasizes the difference in the character and value of the property of the respondent throughout the system, (Opinion, R. 151, 154, 155) and says (Opinion, R. 151, 155) that the use of the factor 3.29, without recognizing and making allowance for this existing difference, constituted an unreasonable and arbitrary method of fixing the value of the property in Wyoming.

The witness, Lorch, testified for respondent as to what these existing differences in the character and value of respondent's property within and without the State of Wyoming consisted of. The Record, at Pages 87 to 96, contains the items of valuable property located outside the State of Wyoming which, respondent contends, make the difference in value. These items total $78,027,500.00. Subtracting this amount from the accepted system value of $375,285,903.00, and allocating value on a mileage basis after making this deduction, the average system mile value is $36,333.51.

Wyoming mileage was valued at $28,313.00 per mile, leaving Wyoming mileage valne $8,020.51 below the average system mile value after eliminating the value of all special improvements outside Wyoming listed by respondent.

The decree is based upon erroneous findings of fact and erroneous conclusions of law. Respondent admits the regularity of the tax in every respect, except the claim of overvaluation, and paid that portion of the tax which it acknowledged was due from it to the several petitioners.

On the question of valuation of respondent's Wyoming property, an honest difference of opinion between the officials of the respondent and the State Board of Equalization is the only controversial question in the Record. The decree, permanently enjoining the collection of any tax in excess of the amount found by the Trial Court to be due, based upon a valuation determined by that court, is contrary to law.

Kentucky Railroad Tax Cases, supra, Page 339.
Taylor v. Secor, supra.
Bunten v. Rock Springs Grazing Ass'n, supra.
Minot v. Philadelphia, etc. R. R. Co., 85 U. S. 206.
Southern Ry. Co. v. Watts, supra.
Coulter v. Louisville, etc. R. R. Co., supra.

VI

CONCLUSION

Your petitioners respectfully submit that the above case justifies, and calls for, the exercise by this Honorable Court of its powers of supervision, as the action of the Federal District Court in permanently enjoining the collection of the taxes in question based upon the valuation determined by the Wyoming State Board of Equalization, affects the whole revenue structure of the State of Wyoming, not only in the instant case, but in all future acts of the Wyoming State Board of Equalization in the honest performance of its constitutional and statutory duties, making its acts subject at all times to review and control by the Federal courts.

If this decision be permitted to stand, it will result in continuing and increasing litigation between aggrieved taxpayers and the State of Wyoming, based upon only an honest difference of opinion, materially interfering with, and disrupting, an orderly and systematic procedure in the raising of revenue for the maintenance of state, county, city and school governments of the state, permitting escape from taxation by disputing in a Federal court the legality of taxes based upon

nothing more than an assertion of error by the Wyoming State Board of Equalization in determining valuation of property for taxation.

Respectfully submitted,

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Appendix

WYOMING REVISED STATUTES, 1931

Section 115-119:

Property to be listed yearly—Real estate. All taxable property is to be listed and valued each year, and real property is to be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvements in the vicinity, and all other elements of its value.

Section 115-501:

Creation of board. There is hereby created a state board of equalization for the state of Wyoming.

Section 115-502:

Membership of board—Appointment. Said board shall be composed of three members, who shall be appointed by the governor by and with the advice and consent of the senate.

Section 115-511:

Duties of board. It shall be the duty of said board to make all necessary rules and regulations for the performance of its duties and for conducting hearings and other proceedings:

(a) To examine and compare the returns of the assessment of the property in the several counties, cities and towns and equalize the same, so that all taxable property in the state shall be assessed at its true and full value, and to that end may add to or deduct from the aggregate valuation of the property, or of any class or classes of property, in any county or counties, or in any district or subdivision thereof, such per cent. as will bring the same to its true value, and place its assessed valuation upon a par with property of the same class throughout the state. When such assessed valuation has been raised or lowered, the board shall give notice of the action taken, to the board of equalization of the county in which such property is situated, on or before the first Monday in August and upon receipt of such notice by such county board of equalization, the said county board of equalization shall

take the necessary action to make effective the action taken by the state board of equalization.

When in their opinion, it would be of assistance in equalizing values, the board may require any county assessor to furnish statements showing assessments of the property of any individuals, firms or corporations within the county. The board shall consider and equalize such assessments and may increase or decrease assessment of individuals, firms or corporations above the amounts returned by the county board of equalization when the property so assessed shall appear to be over-valued or under-valued, first giving notice to such persons of their intention so to do, which notice shall fix a time and place of hearing; provided, that any person, persons, firm or corporation may have the right of appeal from the decision of the board to the district court of the county wherein the property is situated;

(b) To carefully examine into all cases wherein it is alleged that property subject to taxation has not been assessed or has been fraudulently or for any reason improperly or unequally assessed, or the law in any manner evaded or violated, and to cause to be instituted such proceedings as will remedy improper or negligent administration of the taxing laws of the state;

(c) To confer with, advise and give necessary instructions and directions to county assessors throughout the state as to their duties under the laws of the state. One or more of the members of the board shall officially visit each county of the state annually and inquire into the method of assessment and taxation and ascertain whether the assessors faithfully discharge their duties, particularly as to their compliance with the laws requiring the assessment of all property not exempt from taxation;

(d) To advise with and aid and assist the county board of equalization in the performance of their duties;

(e) To require individuals, co-partnerships, associations and corporations to furnish such information as may be required by said board concerning all subjects pertaining to property owned by him, her, them, or it, for purposes of taxation;

(f) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the liability and punishment of public officers and agents of corporations, and individuals for failure or neglect to comply with the provisions of the laws of this state governing the return, assessment and taxation of property, and to cause complaints to be made against county assessors, members of county boards of equalization, or any other assessing or taxing officers, to the proper authority, for their removal from office for misconduct or neglect of duty;

(g) To subpoena witnesses to appear and give testimony, and to produce books, records, papers and documents relating to any tax matters which the board may have authority to investigate or determine, and to cause the deposition of witnesses residing within or without the state, or temporarily absent therefrom, to be taken, upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil actions in the district court, in any matter which the board may have authority to investigate or determine;

(h) To furnish the governor from time to time all information he may require relative to tax matters, and to transmit to the governor on or before the third Monday of December of each year and to each member of the legislature on or before the second Tuesday in January of each odd numbered year, the report of the board for the year showing all taxable property in the state and the value of same in tabulated form;

(i) To require the attorney general or county attorneys in their respective counties to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishments for violations of the laws of the state in respect to the assessment and taxation of property, or to represent the commission in any litigation in which it may become involved in the discharge of its duties;

(j) To require city, town, county, state or other public officers to report information as to the assessment of property, collection of taxes, receipts from excises and other sources, the expenditure of public funds for any purposes, and such other information as may be needful or desirable in the work of the board of equalization, in such form and upon such blanks as the board of equalization may prescribe;

(k) To certify to the county boards of equalization the amount of levy for state purposes on or before the first Monday in August of each year. Whenever the valuation of any county, district or sub-division is changed by the state board of equalization, the officers of such county who have authority to levy taxes are required to use the valuation as fixed by the state board of equalization as a basis for making their levies for all purposes;

(l) To prescribe forms for uniform schedules, rolls and other documents and to determine how lands should be classified for assessment purposes;

(m) To require the county clerks of the several counties to furnish said state board of equalization with a list of the bona fide sales of real estate within their counties, showing the consideration, said list to be furnished monthly on blanks furnished by the state board of equalization and free of expense to said state board;

(n) To decide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the advice and opinion of the attorney general; such opinion and the rules, regulations, orders and instructions of the state board of equalization prescribed and issued in conformity therewith shall be binding upon all officers, who shall observe such rules and regulations and obey such orders and instructions unless and until the same are reversed, annulled or modified by a court of competent jurisdiction;

(o) For the purpose of enforcing its rules, regulations, orders and instructions, and compelling the observance and use of the forms prescribed by it, the state board of equalization may institute or cause to be instituted any proceedings, either civil or criminal, provided by law as a punishment for the neglect, failure or refusal to obey any lawful requirement or order by the board, or as a means of preventing the violation or disobedience of such orders, or compelling their enforcement;

(p) To require the county clerk of each county in the state, immediately after the county boards of equalization have been notified by the state board of equalization of the amount of the county values and state levy, to certify to the state board of equalization, on or before the tenth day of August of each year, in such form and detail as that board may pre-

scribe, the county levy, the school district values and the special school district levies fixed in their respective counties;

(q) To specify the amount of land or lands for mines or mining claims to which the gross output tax provisions of the constitution shall apply.

Section 115-515:

Tax levy made on valuation fixed by board. The county commissioners of the respective counties, in which any portion of any railroad, telegraph or telephone line may be situated, shall levy the requisite taxes for the year, upon the valuation of the property of said railroad, telegraph or telephone company, returned to them as aforesaid at the time provided by law for levying the other taxes.

Section 115-516:

Manner of collecting taxes. The taxes assessed and levied upon the property of any railroad, telegraph or telephone company, under the provisions of this chapter, shall be collected at the time and in the manner provided by law for the collection of other taxes.

Section 115-519:

Assessment of car companies. It shall be the duty of the state board of equalization to ascertain from the statements now required from the car companies and based upon the reports made by the railway companies operating in the state, the total mileage of the cars of each such mercantile or other company, or corporation, firm or individual, within the period of one year within this state. Said board shall ascertain the number of cars of each said company, or corporation, firm or individual by determining the number of cars which if kept in the state would be reasonably required in making such mileage, and such number of cars so found shall be the number of cars on which said company, firm, or individual shall be assessed for said year. The said board shall ascertain and fix the valuation upon each particular class of cars, which as nearly as possible, shall be the true value of such cars, and the number so ascertained shall be assessed to the respective car company, mercantile or other company, firm or individual. For the purpose of making the assessment, the board is authorized to base the assessment upon the returns of the sev-

eral railroad companies. In case any such company, mercantile or other company, firm, or individual, shall fail or refuse to make the statement herein required, the board shall fix the value of such cars and in determining the number and value of such cars the board in so far as may be practicable, shall harmonize the statements of the several car companies, mercantile or other companies, firms or individuals with respect thereto and such assessment shall be included in the records and proceedings of the board. For the purpose of determining the amount of county levy that is to be assessed in the various counties of the state it shall be the duty of the county clerks of the respective counties to certify to the state board of equalization each year, as soon as their county levy is fixed the amount of same. It shall also be the duty of the said board of equalization, and it is hereby authorized and empowered, for the purpose of taxation, each year when it has determined the number of miles traveled by, and the valuation of any car or cars of any car company, mercantile or other company, firms or individuals over the lines of any of the several railroad companies operating in this state, and the proper mileage apportionment of such valuation, to make a levy against the values assessed for each of the respective counties through which said car or cars may have been operated. When said levy shall have been determined the state board of equalization shall cause to be sent to each owner of car line property a statement of the amount of the valuation or assessment, the rate of levy and the amount of tax to be assessed for each of the respective counties in or through which said car or cars have traveled during the year, and the total amount of the same, which tax so found and notified shall be paid into the state treasury for the credit of the respective counties to which it shall be due. When all of such taxes have been collected it shall be the duty of the state treasurer to pay to the respective county treasurers the amount due their respective counties less the state tax, together with the statement of said amounts which shall be paid by the county treasurer to the various school districts as now required by law. In the event that the taxes levied, as provided in this section, shall not have been paid on or before the thirty-first day of December of the year in which it was levied, they shall become delinquent and shall bear interest thereafter at the rate of eight per cent. per annum, and if such taxes and interest due thereon shall not have been paid on the first day of Feb-

ruary following the levy thereof, the state treasurer shall collect the same by distress and sale of any property belonging to such delinquent owner in the same manner as is required of county treasurers in like cases, and the order or certificate of the state board of equalization in such cases shall be sufficient authority therefor.

Section 115-1801:

Assessment of property of railroad companies. The state board of equalization is hereby empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the state of Wyoming; provided, however, that all machine shops, rolling mills and hotels, tie preserving plants and any property which is not used in connection with the operation of such railroads and railroad corporations, shall be assessed by the county assessor of the county in which such property is situated, in the manner now provided by law for the listing and valuation of real and personal property.

Section 115-1802:

Time of assessment—Property included. The board, on or before the first Monday of May of each year, shall proceed to ascertain all property of any railroad or railroad corporation, owning, operating or controlling any railroad or railroad service in this state; which for the purpose of assessment and taxation, shall be held to include the main track, second track, side tracks, spur tracks, warehouse tracks, road bed, right-of-way and depot grounds, and all water and fuel stations, buildings and super-structures thereon, and all machinery, rolling stock, telegraph lines, telephone lines and instruments connected therewith, and all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with the franchise and all other property of such railroad company used or held for the purpose of operating its road, except machine shops, rolling mills, hotels, tie preserving plants and any property which is not used in connection with the operation of such railroad and railroad corporation; and appraise and assess the same as personal property as herein provided.

Section 115-1803:

Return of schedule of property—Contents. On or before the first day of May in each year, the person, company, or corporation, owning, operating or controlling any railroad or railroad service in this state, shall, by its president, secretary, or principal accounting officer, return to the state board of equalization, a sworn statement or schedule of the property of such company on the first Monday of February preceding, as follows:

First. Of the right-of-way, track and road bed, giving the entire length of the main track in this and other states, and showing as to this state the portion in each county, and actual value;

Second. The length of side or second track and turn-out, spur, and warehouse track, the aggregate length of such side or second track, turn-out, spur and warehouse tracks, together with the name of the county in which such side or second track and turn-outs, spur, and warehouse tracks are located, and the actual value;

Third. A complete list giving size and location, as to each county, material and value of all depots, station houses, stock yards, scales, section houses or other buildings, situated wholly or in part on the right-of-way, or depot grounds, or used in the operation of the railroad, together with all platforms, fuel and water stations and machinery and tanks connected therewith, and the actual value;

Fourth. The number of ties in track per mile, the weight of iron or steel rails per yard, used in the main, second or side track, what joints or chairs are used in track, kind of ballasting, length of time iron or steel has been used, and what length of time the road has been built;

Fifth. A full list of the rolling stock belonging to or operated by such road, which shall distinctly set forth the numbers, class and actual value of all locomotives, passenger cars, dining cars, official cars, pay cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, double-deck cars, coal cars, flat cars, oil tank cars, water tank cars, wrecking cars, hand cars, motor hand cars, velocipedes, push cars, and all other kinds of cars, owned or used by such company, whether within or without the state of Wyoming,

together with a statement of the number of miles of travel by each of the classes of cars over the line of such company within the state of Wyoming and without the state of Wyoming, separately, during the year preceding the first day of January last preceding the date of the report;

Sixth. A correct return and actual value of all snow plows, flangers, derricks, and all tools and materials used for repairing, and all other personal property in the state of Wyoming, together with such other information as the state board of equalization may require in order to enable them to apportion said rolling stock between the main line and the branches of the road;

Seventh. A true statement and actual value of all bridges, tunnels, snow sheds, snow fences, and right-of-way fences, showing where located as to county;

Eighth. A statement or schedule showing:

(1) The amount of capital stock authorized, and the number of shares into which such capital stock is divided;

(2) The amount of capital stock paid up;

(3) The market value of such stock, or if no market value, then the true value of the shares of stock;

(4) The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road;

(5) The location and actual valuation of all its real estate and personal property in this state that is locally assessed.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the state board of equalization, which value shall be taken into account and be considered in arriving at the true value of such railroad property and its franchise;

Ninth. The total gross earnings and net earnings from railway operations of said corporation during the year for which said statement is made, and the amount expended in the operation and maintenance of the property and improvements thereof, distinguishing that expended in improvement or betterment from that expended in maintenance and operation; also the dividend last declared upon its shares and the amount thereof, and the date, number, and the amount of all dividends declared and paid upon its stock during the year next preceding the date of such report, and such other infor-

mation as the state board of equalization may in writing require, all of which shall be taken into consideration in ascertaining and fixing the value of such road and the franchise thereof, together with such other information as the state board of equalization may require in relation thereto;

Tenth. A statement or schedule showing:

(1) The name of the company;

(2) The nature of the company, whether a person, association, company or corporation, and under the laws of what state or country organized;

(3) The location of its principal office;

(4) The name of the place where its books, papers and accounts are kept;

(5) The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, counsel, directors and all other general officers;

(6) The name and post-office address of the chief officer or managing agent of the railroad company in Wyoming, and of all other general officers residing in the state;

(7) The market value of the shares of capital stock for the whole system on the dates and for the period the board may request or specify;

(8) If such stock has no market value, the actual value on the dates and for the periods the board may request or specify;

(9) The funded debt of the railroad company for the whole system and a detailed statement of all series of bonds, debentures or other securities forming a part of the funded debt, at par value, with date of issue, maturity, rate of interest and interest paid;

(10) The market value of each series of funded debt of the whole system, of the dates and for the periods designated by the board, and if the whole or a part of such funded debt has no market value, then the actual value thereof for such dates and periods as the board may specify;

(11) A statement in detail of all capital stock, bonds or other securities of such railroad company owned by, or held in trust, for the company, and the capital stock, bonds or other securities of other persons, companies or corporations owned by or held in trust for it, and the par value and the market value of the same;

(12) The whole length of the lines of the railroad system operated by the company and the length of the lines in Wyoming, and each city and village, whether operated as owner, lessee or otherwise; the length of the line owned and the length of the line operated for the whole system, and in Wyoming, shall be separately reported;

(13) The annual reports of the board of directors or other officers to the stockholders of the company for the five years preceding;

(14) In addition, all other information and facts herein required, and such other facts and information as the board may require in the form of returns prescribed by it.

Section 115-1804:

Investigation of return. The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the state board of equalization shall, from all the information which it is able to obtain, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line.

Section 115-1809:

Notification of company by board. As soon as the state board of equalization shall have made and determined said valuation and assessment aforesaid, and before certifying to the county assessors of the several counties the valuation and assessment so made by it on the property of any railroad or railroad corporations, in the manner as provided herein, it shall notify in writing by registered mail, the company or some officer thereof, what valuation and assessment it has made upon said property; and if the company shall have any objection to the valuation and assessment as made by the said state board of equalization, it shall have fifteen days thereafter in which to file with said board its objection in writing fully setting forth therein the nature of said objection, and such company shall after the making of said notice, have the right to appear and be heard by said board, on all matters relative to valuation and assessment of the property of said

company, and the said board of equalization shall within a reasonable time after the receipt of such written objection notify said company when it shall appear and be heard. On or before the first Monday in July, or as soon thereafter as the said board or any two thereof shall have made and determined such valuation and assessment, the said board of equalization shall certify to the county assessors of the several counties in which the property of any such company may be situated, the assessment so made on the property; the county commissioners shall thereupon divide the amount falling within each school district in their respective counties and cause such amounts to be entered and placed on the list of taxable property returned by the several assessors.

Section 115-1810:

Contents of return by assessors. Such return shall include the following:

(1) Number of miles of track of each railroad located in each county sub-division in the county, and the total length of such road in the county;

(2) The average valuation per mile of such road;

(3) The valuation that shall be placed to the credit of such county.

RECEIPT is hereby acknowledged of the service of a copy of the TRANSCRIPT OF THE RECORD in the Circuit Court of Appeals for the Tenth Circuit, and..... copies of the PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF, this..... day of....., A. D. 1934.

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Counsel for Respondent.